IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 4012 of 1996

For Approval and Signature:
HON'BLE MR. JUSTICE ANANT S DAVE

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

H H LAKHDODA
Versus
DEPUTY CONSERVATOR OF FOREST

Appearance:
1. Special Civil Application No. 4012 of 1996
MR KB PUJARA for Petitioner No. 1
M/S PATEL ADVOCATES for Respondent No. 1

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 18/12/2004

ORAL JUDGEMENT

1. The petitioner, in the present petition under Article 226 of the Constitution of India, challenges the order of suspension dated 28th May 1996 passed by the respondent. According to the petitioner, he had acted as per the instructions given by his superior officers and had performed his duties accordingly. He has further stated that no negligence was shown by the petitioner and, therefore, the order of suspension is contrary to the Rules, more particularly, Rule 5(1) of the Gujarat Civil Services [Discipline & Appeal] Rules, 1971.

2. The matter was admitted by this Court vide order dated 30th July 1996 and an interim relief was also granted, which reads as under;

"Interim relief in terms of para 12(b). Respondent shall, however, be at liberty to transfer the petitioner. Learned advocate Mr. Bambhania requests that this order be stayed for a period of two weeks from today. Request is granted. This order shall not be operative till 16th August 1996."

The said interim relief in terms of paragraph 12(b) remains in operation as on date. Paragraph 12(b) of the petition reads as under:

"Pending the admission, hearing and final disposal of this petition be pleased to stay further operation and implementation of the impugned order of suspension dated 28.5.1996 passed by the respondent as per Annexure "A"."

3. Affidavit-in-reply is filed by the respondent justifying its action of passing the order of suspension and, according to the respondent, it was a case of deriliction of duty by the petitioner.

4. It is to be noted that, by the interim order dated 30th July 1996, only the order of suspension was stayed, and there was no stay with regard to initiation of any departmental enquiry if the respondent chooses to do so. The Authority can resort to an action of suspension mainly in the cases where, on initiation of departmental enquiry, there is likelihood or chance of inflicting one of the major penalties if the charges are proved, or when there is a possibility of delinquent indulging into tampering with the record or influencing the witnesses. During pendency of this petition for about eight years, nothing comes on record about justification of passing the order of suspension, except what is stated in the affidavit-in-reply. When the order of suspension has remained stayed for all these years, no case is made out by the respondent that the delinquent had ever indulged into any of the activities of tampering with the record or influencing the witnesses. Thus, it cannot be said that the order of suspension is required to be sustained by this Court. Further, even if the enquiry had been initiated and the charges levelled against the petitioner had been proved, it would not result into inflicting any of the major penalties. Under the circumstances, when it was kept open for the respondent to transfer the petitioner from the place of alleged incident, the likelihood of the petitioner indulging into the activity of tampering with the record or influencing the witnesses was taken care of, and, therefore also, it is difficult to sustain the order of suspension passed by the respondent.

5. In the result, the petition is allowed. The order of suspension dated 28th May 1996 passed by the respondent is quashed and set aside. Rule is made absolute with no order as to costs.

(Anant S. Dave, J.)
(swamy)